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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,522	08/24/2000	Zeev Maor	00654759	8228

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EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/582,522

Applicant(s)

MAOR ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,10,12,13,15-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,10,12,13,15-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1, 3-6, 10, 12-13, 15-19, 21-24 are pending. The Amendment filed 11/26/03, amended claims 1, 3, 5, 12, and 23, and cancelled claims 2, 7-9, 11, 14, and 20. It is respectfully noted that in the "Listing of Claims", Applicant has identified claims 13 and 19 as "currently amended", however, no amendments have been made in these claims.

Applicant's amendments to claims 3 and 23, wherein the trademarks have been removed, are sufficient to overcome the 35 USC 112 rejections over these claims in the previous Office Action.

Applicant's amendments to the claims have necessitated new grounds of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6, 10, 12-13, 15-19, 21-24 rejected under 35 U.S.C. 103(a) as being unpatentable over machine translation of Kyotaro et al. (JP 08113530) in view of Biener (4,943,432) and in view of Thompson et al. (5,425,954).

The instant invention is directed toward compositions comprising Dead Sea water, non-ionic solubilizer, a hydrophobic active agent, a gelling agent/viscosity modifier, and deionized water to complete to 100%.

Kyotaro et al. teach bathing compositions comprising Dead Sea water for beautifying the skin horny later, accelerating skin functions, restoring or improving the functions essentially

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possessed by the skin and keeping the skin in a normal state, wherein the Dead Sea water is blended into the composition in an amount of 20% or more, see abstract. For natural and synthetic perfumes, see page 2 part (7). For gelling agents such as carboxymethylcellulose, methyl cellulose, sodium alginate and PVP, see page 1, part (5). Surfactants, amino acids, vitamins and other ingredients are taught as additives on page 2, part (8). For Dead Sea water comprising 50-60% of the composition, see the tables on page 3 (Page 1 teaches D.S. and D.S-S as dead sea water). For hydrophobic active agents, see page 1, part (4). It is respectfully pointed out that avocado oil is a vegetable oil (hydrophobic actives of page 1, part (4)). For hydrophilic active agents, see pg. 2, part (6). It is respectfully pointed out that glycerol, propylene glycol, and sorbitol are known humectants (hydrophilic actives of page 2, part (6)). For lavender oil, see page 2, part (7). The reference does not teach gel forms, nonionic solubilizer, or deionized water to complete 100%, or antioxidants, or preferred percent weights.

Biener is directed to compositions that contain a salt mixture resembling Dead Sea water (title and abstract). The compositions contain salts and water of hydration (equivalent to deionized water recited in instant claims) The composition can be in gelled form (abstract). For gelling agents or viscosity modifiers see natural gums and cellulose esters and ethers at column 4, lines 9-15, wherein col. 6, lines 13-15 teach adding 1-2% of these gelling agents. For a transparent gel, which is considered equivalent to a clear gel, see column 4, lines 15-16. It is taught that it is advantageous to apply the salt solution in gel instead of fluid form because gel composition forms can isolate certain parts of the body for and from treatment. The gel of Beiner are transparent (clear). See Col. 4, lines 4-8.

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Thompson et al. teach compositions for the treatment of skin. Vitamin E/tocopherol acetate is taught as preventing the oxidation of fatty acids, thereby protecting lipids and lipoproteins in cell membranes which allows cells to retain water binding capacity and prevents dry skin. Ceteth-20 (polyethylene glycol ether of cetyl alcohol having 20 CH₂OCH₂ units) is taught as a lubricant comprising 1.5% of the composition. See Col. 3, lines 9-24; Col. 5, line 44-Col. 7, line 39.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the composition of Kyotaro in the form of a gel comprising deionized water, as taught by Beiner, a) because Kyotar and Beiner are both directed toward cosmetic salt, bathing compositions comprising very similar concentrations of salts; and, b) because of the expectation of achieving a composition that can target specific parts of the body and avoid specific parts of the body, for maximum therapeutic effect.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the vitamin E and ceteth-20 taught by Thompson et al. to the composition of Kyotar because of the expectation of achieving a composition that prevents oxidation and drying out of the skin and because of the expectation of achieving a composition that has lubricant properties, and thus, smooth feel when applied to the skin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the percent weights of the instant invention as that of the combined references because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

The instant arguments are directed toward the newly amended claims, which required the new grounds of rejection above. However, to the extent that the arguments may be relevant to the instant rejection, the Examiner will address them.

Applicant argues that "Thompson et al. "does not concern preparations having such a high salt content as those present in actual Dead Sea water. . Furthermore, Thompson et al. did not attempt to obtain a clear gel". This argument is not persuasive, as Thompson et al. was merely relied upon to teach conventional additives in cosmetic compositions that are applied to the skin.

Applicant argues that unexpected results have been achieved and has provided a 132 Declaration. The Examiner respectfully directs Applicant to the guidelines for establishing unexpected results. It is applicant's burden to demonstrate unexpected results over the closest prior art. See MPEP 716.02, also 716.02 (a) - (g). Furthermore, the unexpected results should be demonstrated with evidence that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Moreover, evidence as to any unexpected benefits must be "clear and convincing" *In re Lohr*, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, *In re Linder*, 173 USPQ 356 (CCPA 1972).

First, it is respectfully pointed out that the declaration is not commensurate in scope with the instant claims, as the instant claims can comprise any non-ionic solubilizer, and are not limited to just tween 20 or 80. Furthermore, it is respectfully pointed out that there is no

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comparison with the closest prior art and that Biener teaches that compositions comprising salt concentrations almost identical to that of Dead Sea water are transparent.

Suggestions

The Examiner suggests that Applicant thoroughly read the above references utilized in the instant rejection. If the above primary reference requires the addition of an ionic solubilizer, it is suggested that Applicant limit their claims to consisting essentially of, with a showing that additional ingredients, such as those taught by the references, would materially affect the instant composition.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

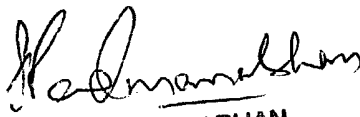
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER